

Study N-301

September 23, 1998

First Supplement to Memorandum 98-58

**Administrative Rulemaking : Advisory Interpretations:
Comments on Tentative Recommendation**

We have received a letter from Ann Broadwell regarding Memorandum 98-58. The letter is attached. Ms. Broadwell and another member of her firm have previously written the Commission recommending that the proposed law should not be used to adopt California Environmental Quality Act guidelines (CEQA guidelines). The Commission accepted that recommendation and added a general scope limitation provision that would preclude adoption of CEQA guidelines as advisory interpretations. Problems with the drafting of that provision are discussed in Memorandum 98-58.

Ms. Broadwell does not oppose the staff's general solution to the drafting problems — replacing the general scope limitation provision with a simple exemption of CEQA guidelines from the proposed law. However, she does object to the proposed method of implementing that solution — amending the provisions of CEQA that govern adoption of CEQA guidelines. She believes that any attempt to amend CEQA would be fraught with political difficulties. See Exhibit. She proposes instead that a provision exempting CEQA guidelines from the proposed law be added to the proposed law itself. This would avoid the potential political controversy associated with attempts to amend CEQA.

Ms. Broadwell's point is persuasive. The staff's suggestion to amend the CEQA provisions directly was intended to make the exemption more visible to CEQA practitioners. While that goal is sensible, it doesn't seem to justify the political problems that Ms. Broadwell predicts.

Respectfully submitted,

Brian Hebert
Staff Counsel

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ADAMS BROADWELL & JOSEPH

THOMAS R. ADAMS
ANN BROADWELL
DANIEL L. CARDOZO
MARC D. JOSEPH
KATHERINE S. POOLE
LIZANNE REYNOLDS

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
651 GATEWAY BOULEVARD, SUITE 900
SOUTH SAN FRANCISCO, CA 94080

TELEPHONE
(650) 589-1660
FACSIMILE
(650) 589-5062



September 17, 1998

VIA FACSIMILE

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Attn: Brian Hebert

Re: Advisory Interpretations

Dear Commissioners:

I have received and reviewed Memorandum 98-58 relating to Advisory Interpretations. As you know, my concern about this proposal is its potential effect on the CEQA guidelines.

I had previously supported the proposed wording in the "Scope of Proposed Law" section because I believe that it clearly provided that the CEQA Guidelines cannot be adopted as advisory interpretations. However, I understand the concerns that the staff has raised about that wording in the most recent Memorandum.

The current proposal is to amend CEQA itself to clarify the intent of the advisory interpretations proposal. Instead of amending CEQA, I suggest that section 11360.010(d) be amended to provide directly that, "The CEQA guidelines referenced in Public Resources Code section 21083 shall not be adopted as advisory interpretations." This allows the whole issue to be resolved in the statute that deals with advisory interpretations. It also avoids the problems that the staff has identified with the current wording.

I am concerned that the proposal to amend CEQA would cause more controversy than would otherwise be created by the advisory interpretations proposal itself. CEQA is a sensitive statute and any attempt to amend it always

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causes huge debates with numerous participants expressing varying points of view. Much of CEQA consists of procedural requirements, and any amendments to those procedural requirements are hotly contested.

If the advisory interpretations proposal is tied to an amendment to CEQA, its consideration by the legislature will be much more complex and difficult. Parties will undoubtedly propose other amendments to CEQA, or revise the wording proposed by the Commission, or use the proposal for other purposes. For these reasons, the California Pipe Trades Council would oppose amending CEQA, and suggests that section 11360.010(d) be amended directly.

Thank you for your consideration of this comment.

Very truly yours,



Ann Broadwell

AB/end

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